IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.837 OF 2007

Shantaram Dhondu Kapse ..Petitioner

V/s.

Air India Limited ...Respondent

Mr.Ramesh Kube-Patil i/b Ajay Misar & Co. for Petitioner.
Mr.S.K.Talsania with Mr. J.S.Saluja for Respondent i/b M/s.M.V. Kini & Co. for Respondent No.1.

CORAM : V.M. KANADE, J.
DATED : 17th APRIL, 2007.

P.C.:

1. Heard the learned counsel appearing on behalf of the Petitioner and the learned counsel appearing on behalf of the Respondent.

2. The Petitioner is challenging the order passed by the Presiding Officer, the National Industrial Tribunal, Mumbai, dated 29/08/2006, whereby an application which was made by the company for declaring the approval application which was filed by the Company U/s.33(2)(b) of the I.D. Act, 1947 as infructuous/nonest, is dismissed.

3. By consent, rule. Rule is made returnable forthwith.

4. Brief facts which are relevant for the purpose of deciding this petition are as under:-

The Petitioner joined services of the Respondent-Company as Peon on 09/08/1972 and he was confirmed in service on the said post on 01/02/1973. On 02/07/1997, chargesheet was issued against him and after conducting inquiry, his services were terminated by an order dated 23/10/1997.

5. The Respondent-Company filed an application U/s.33(2)(b) of the I.D. Act seeking approval of the dismissal of the Petitioner. This had become necessary in view of reference which was made by the Central Government vide N.T.B-01/1990. While referring the matter, the Central Government had mentioned in its order that there was a dispute between Management of Indian Airlines and its workmen in respect of matters specified in the schedule. It was also mentioned that dispute involved question of national importance covering establishments of Indian Airlines which were situated in more than one State and which were likely to be affected by the terms

of reference which included various demands made by the employees of Indian Airlines who are on par with employees of Air India. Therefore, notices were issued not only to Indian Airlines but also to Air India. Notices which were issued were challenged in this court vide Writ Petition No.1910 of 1991 and Writ Petition No.2805 of 1991. Both the petitions were dismissed and it was held that though Air India was not necessary party, it was certainly a proper party. This order of the Single Judge was challenged before the Division Bench in L.P.A.No.604 of 1991 and the Division Bench rejected the application and therefore, pending the reference, Air India filed application U/s.33(2)(b) of the I.D. Act seeking approval of the dismissal of the Petitioner. Meanwhile, the National Industrial Tribunal in reference No.NTB-01/1990 by its order 6th September, 2004 observed in para 24 to 27 of the Judgment that Air India could not be a party to the reference as the reference was made by the Central Government only in respect of the dispute between Indian Airlines and its employees. The National Industrial Tribunal also while passing part-I award in the said reference held that said award would be binding on Indian Airlines and its employees only and not

the employees of Air India.

6. The Hon'ble Apex Court also in the case of **Air India Ltd V/s. Vishal Capoor and Anr.** clarified that Air India and its workmen are not concerned with the reference No.NTB-01/1990.

7. Similarly this Court in Writ Petition No.2671/2002 and in Writ Petition No.2293/2003 also observed that since the reference was not applicable to the employees of Air India, it was not necessary for the Air India to make an application for approval U/s.33(2)(b) of the I.D. Act.

8. In the background of these facts, an application was made by the Respondent-Company before the National Industrial Tribunal for declaration that the approval application may be dismissed on the ground that it had become infructuous/nonest. The Tribunal by the impugned order rejected the said application.

9. The learned counsel appearing on behalf of the Petitioner submits that he has challenged the said order since admittedly approval application had become infructuous and therefore, the

Tribunal ought to have dismissed the said application. He submits that since the Tribunal had decided to proceed with hearing of the present application, the workman would have to wait for another two to three years and thereafter, in any case, in view of the judgment of the Hon'ble Apex Court and orders of this Court, the approval application would be declared as infructuous and therefore he had filed the present writ petition. It is further submitted that the Petitioner had waited for a period of eight years during the pendency of the approval application and he would have to wait for another two to three years till the application was finally decided. He further submitted that it would be futile exercise to proceed with the approval application as in this process the workman would lose another two to three years.

10. The learned counsel appearing on behalf of the Respondent-Company submits that submission made by the learned counsel for the Petitioner should be accepted and the impugned order should be set aside.

11. Considering the facts that in Part-I award dated 6th

September, 2004, it is made explicitly clear that the employees of Air India are not concerned with the reference and that this fact has been confirmed by the Supreme Court and this Court, in my view, the Tribunal has committed an error in rejecting the application filed by the Respondent-Company. The Tribunal ought to have considered the judgment and order passed by this court in the aforesaid two writ petitions as referred to herein above. The judgment and order passed by this Court is binding on the Tribunal and the Tribunal ought to have, on the basis of said judgment, passed an order of declaring the approval application as infructuous.

12. In the result, writ petition is allowed. Impugned order passed by the Presiding Officer, the National Industrial Tribunal, Mumbai is quashed and set aside. The Approval Application No.NTB-13 of 1998 filed by the Respondent-Company has become infructuous in view of the subsequent events and the subsequent order passed by the Tribunal, this Court and also the Hon'ble Apex Court.

13. In my view, the Petitioner would have an

independent right of making reference to the Industrial Tribunal, challenging the order of his termination. Taking into consideration the facts that already he has waited for eight years, it would be appropriate if direction is given to the Central Government to refer the dispute if raised by the Petitioner for adjudication within a period of three months. The Petitioner may raise dispute within a period of four weeks. The Central Government shall refer the dispute within a period of three months thereafter. The Respondent-Company shall not raise any objection to the reference on the point of limitation. After the matter is referred to the Tribunal, the Tribunal shall decide the dispute as expeditiously as possible and in any case within a period of one year. With this direction writ petition is disposed of in the above terms. Rule is made absolute accordingly.

V.M. KANADE, J.